

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

STEVEN G. :

vs. :

SMITHFIELD :
SCHOOL COMMITTEE :

D E C I S I O N

March 1, 1991

The record in this matter establishes that Steven G's wife died several years ago. Mr. G lives in Providence. Since Mr. G is a truck driver and is frequently away from home, his son, therefore, lives with his grandmother in Smithfield, Rhode Island.

We think that this matter is squarely controlled by that part of §16-64-1 which reads:

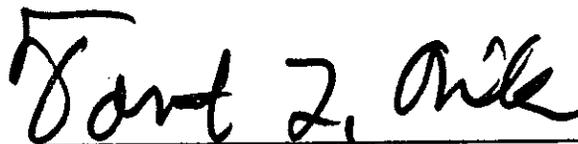
. . . (W)hen parents are unable to care for their child on account of parental illness, or family break-up, the child shall be deemed to be a resident of the town where the child lives with his or her legal guardian, natural guardian, or other person acting in loco parentis to the child."
(Emphasis added).

The grandmother in this case is plainly the student's natural guardian and also acting in loco parentis.

This matter is also covered by the reasoning set out in Laura Doe vs. Narragansett School Committee, April 17, 1984. (Copy attached).

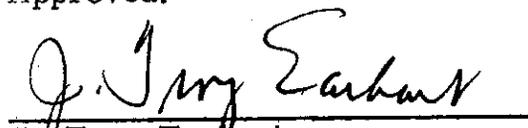
Conclusion

This student is a resident of Smithfield for school purposes.



Forrest L. Avila, Esq.
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

March 1, 1991

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

LAURA DOE

vs.

NARRAGANSETT
SCHOOL COMMITTEE

D E C I S I O N

April 17, 1984

FINDINGS OF FACT

The record establishes that Laura Doe, a kindergarten student, is living with her aunt, Jane Smith, in the Town of Narragansett. Jane Smith and her husband provide for Laura's support and Laura is subject to their care, control and discipline. Laura was born on August 3, 1977 and since she was one year old she has spent summers and weekends with her aunt. Until about May 23, 1983 Laura lived with her mother in Newport with two other siblings. On or about May 23, 1983, Laura went to live with her aunt in Narragansett. Laura's mother and father now live in Providence, but Laura has continued to live with her aunt in Narragansett. The reason given for this arrangement is that Laura was subject to crying spells when she was living apart from her aunt. On such occasions Laura would not eat or sleep. When Laura was living with her mother, Laura failed to gain weight. Laura's mother could not cope with Laura's crying spells. When Laura returned to live with her aunt, Laura's crying stopped and she began to gain weight. It is expected that Laura will remain indefinitely with her aunt.

CONCLUSIONS OF LAW

The School Committee contends that this case is governed by that portion of G.L.16-64-1 which reads as follows:

A child shall be deemed to be a resident of
the town where his parents reside.

The School Committee argues that, since the record establishes that Laura's

mother and father are living in Providence, Laura must irrebuttably be presumed to be a resident of Providence, even though she is, in fact, living in Narragansett. We reject this argument. The above-quoted language simply establishes a child's right to attend school in a town where he is living with his parents. It does not preclude a child from establishing a school residence apart from that of his parents when the proper legal standards are met. The narrow construction argued for by the School Committee would run counter to the initial command of G.L.16-64-1 that a child ". . . shall be enrolled in the school system of the town where he resides. . . ." while at the same time it would render nugatory, for the most part, the saving clause of G.L.16-64-1 which states "In all other cases a child's residency shall be determined in accordance with the applicable rules of the common law." We, therefore, do not read G.L.16-64-1 as creating an irrebuttable presumption that precludes a student from ever establishing a residence apart from his natural parents. We also note that the creation of such an irrebuttable presumption might run afoul of the Supreme Court's latest pronouncement in this area of the law, Martines v. Bynum, 103 S.Ct. 1838 (1983). See also: In The Matter Of Priscilla H., Commissioner of Education, September 7, 1983.

In sum, we think that the "deeming" provision of G.L.16-64-1 creates nothing more or less than a rebuttable presumption that a child's residence is the residence of his parents. It is not unusual for "deem" to have this meaning (e.g. Rayle v. Rayle, 202 S.E.2d 286), espec-

ially in statutes dealing with residency (e.g. Hardy v. Lomenzo, 349 F.Supp. 617).

The question in this case is thus whether the petitioner student has put sufficient evidence on the record to rebut the presumption that her residency for school purposes is now Providence, given that her parents are living in that city. In a previous decision (In The Matter of Priscilla H., Commissioner of Education, September 7, 1983) we have discussed in detail the law of school residency in Rhode Island, and the common law of school residency which covers cases not preclusively determined by the statute. Since we have ruled that the "deeming" provision does not preclusively establish Laura's residency as being Providence, and since no other portion of the statute appears to be directly relevant,¹ we must examine this case in the light of the common law of school residency. The applicable law is well stated in Schools and the Law, E. Edmund Reutter, Jr., Oceana Publication, 1981 p.48:

RESIDENCE: Whether a child has a right to attend school in a given school district depends upon where he has his legal residence. It is generally held that a child has the right to attend the schools of the district in which he is actually living. The only major exception is when he is living in that district solely for the purpose of attending the school there. A child who for reasons other than schooling is living in a boarding house generally is entitled to attend free the schools of the district containing the establishment. The same is true for a child living with a relative, even though the relative is not his legal guardian.

¹We reject the suggestion that the "family break-up" provision of G.L.16-64-1 is relevant to this case. We think it plain that "family break-up" refers to the relationship existing between parents and not to the relationship existing between parents and children.

Our duty is, therefore, to determine whether Laura is living in Narragansett for a substantial reason other than to go to school there. (Our own Rhode Island statute repeats this common law rule when it states that even the appointment of a guardian does not shift a child's residence ". . . unless the guardian has been appointed for a substantial reason other than to change the child's residence. . .")

If Laura were an older child we might be more skeptical of the present claim. In the case at hand, however, it seems entirely credible that a very young child, who lives with a relative for a prolonged period of time, could come to see the relative as a parent substitute, and that such a child would suffer extreme and protracted anxiety on any occasion when she was separated from her substitute parent. While we do not suggest (and have no jurisdiction to decide) that Laura's aunt has acceded to all the rights of a parent as occurred in Hoxsie v. Potter 16 R.I. 375 (1888), we think that this case does recognize the common sense fact that young children can become extremely attached to, and dependent on a relative who fills the role of a parent.

Under the unique circumstances of this case we think that the reason why Laura is living with her aunt is because her aunt has become the emotional equivalent of a mother for Laura and that this very young child cannot now be separated from her aunt without extreme suffering. We think Laura is living with her aunt in Narragansett for these reasons and not ". . . for the sole purpose of attending school. . ." in Narragansett. (Schools and the Law, supra). Under these circum-

stances Laura is entitled to attend the public schools of Narragansett. There is nothing in Rhode Island school residency law which would compel, on a de facto basis, the dissolution of the bond which has formed between Laura and her aunt and the restoration of Laura to a difficult situation with her natural mother.

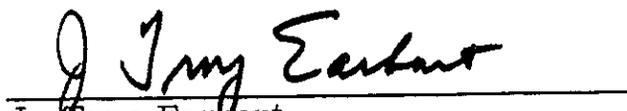
CONCLUSION

Laura Doe is a resident of Narragansett for school purposes and is entitled to attend the public schools of Narragansett.

²This case is easily distinguishable from Grinnell vs. Newport School Committee, Commissioner of Education, April 12, 1984. In Grinnell, a Middletown mother had placed her child with the child's grandmother in Newport because the mother would be operating a charter fishing boat in the Caribbean. The mother returned from the Caribbean and took up residence again in Middletown. No reason was given to show that the child was now living in Newport for a reason other than to attend school there. It was, therefore, held that the child concerned was not entitled to attend the public schools of Newport.


Forrest L. Avila, Esq.
Hearing Officer

Approved:


J. Troy Earhart
Commissioner of Education

April 17, 1984